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|--|------------------------------------|---|--|--|--|
| SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair) | | 3. SOLICITATION NO. NND11385257E | 4. TYPE OF SOLICITATION <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP) | 5. DATE ISSUED JULY 27, 2010 | PAGE 1 OF 70 PAGES |
| IMPORTANT – The “offer” section on the reverse must be fully completed by offeror. | | | | | |
| 4. CONTRACT NO. | | 5. REQUISITION/PURCHASE REQUEST NO. 4200385257 | | 6. PROJECT NO. EDM-1703 | |
| 7. ISSUED BY NASA DRYDEN FLIGHT RESEARCH CENTER P.O. BOX 273 M/S D-1422 RKB EDWARDS, CA 93523-0273 | | CODE | | 8. ADDRESS OFFER TO (If other than Item 7) SEE BLOCK 7 | |
| 9. FOR INFORMATION CALL:  | A. NAME Robyn Barton | B. TELEPHONE NO. (NO COLLECT CALLS) AREA CODE NUMBER EXT. (661) 276 3190 | | | C. EMAIL ADDRESS Robyn.K.Barton@nasa.gov |

SOLICITATION

NOTE: In sealed bid solicitations “offer” and “offeror” mean “bid” and “bidder”.

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

FACILITIES SUPPORT CENTER BUILDING

OFFERS SUBMITTED VIA OTHER MAILING SERVICES SUCH AS UPS, FED EX, ETC., SHOULD BE SENT TO: NASA DRYDEN FLIGHT RESEARCH CENTER, WAREHOUSE #6, BUILDING 4876, LILLY DRIVE, EDWARDS, CA 93524.

THIS PROCUREMENT IS A TOTAL HUBZONE SMALL BUSINESS SET-ASIDE PROCUREMENT.

THE MAGNITUDE OF THIS PROJECT IS MORE THAN \$10,000,000.00.

REFERENCE SECTION L, PARAGRAPH L.6, FAR PROVISION 52.236-27, FOR SITE VISIT DETAILS SCHEDULED FOR. **AUGUST 10, 2010**. BIDDER'S ARE REMINDED OF THE OPERATION OF FAR CLAUSES 52.236-2, DIFFERING SITE CONDITIONS, and 52.236-3, SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK.

TECHNICAL QUESTIONS MUST BE SUBMITTED NOT LATER THAN **AUGUST 20, 2009**.

| | |
|--|-------------------------------------|
| 11. The Contractor shall begin performance within 10 calendar days and complete it within 540 calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See Section F, contract clause F-2 and F-3.) | |
| 12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If “YES.” Indicate within how many calendar days after award in Item 12B.) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | 12B. CALENDAR DAYS 10 |
| 13. ADDITIONAL SOLICITATION REQUIREMENTS: | |
| <ul style="list-style-type: none"> Sealed offers in original and one (1) copy to perform the work required are due at the place specified in Item 8 by 3:00PM (hour) local time AUGUST 30, 2010 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due. An offer guarantee <input checked="" type="checkbox"/> is <input type="checkbox"/> is not required. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected. | |

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)

15. TELEPHONE NO. (Include area code)

16. REMITTANCE ADDRESS (Include only if different than Item 14)

CODE: FACILITY CODE

17. The offeror agrees to perform the work at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government within _____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.

AMOUNTS ➤

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation – give number and date of each)

| | | | | | | | | | | |
|---------------|--|--|--|--|--|--|--|--|--|--|
| AMENDMENT NO. | | | | | | | | | | |
| DATE | | | | | | | | | | |

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER
(Type or print)

20B. SIGNATURE

20C. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN
(4 copies unless otherwise specified) ➤ITEM
SEE BLOCK 2725. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO
☐ 10 U.S.C. 234(c) () ☐ 41 U.S.C. 253(c) ()

26. ADMINISTERED BY

CODE

SEE BLOCK 7

27. PAYMENT WILL BE MADE BY

NASA DRYDEN FLIGHT RESEARCH CENTER
P.O. BOX 273 M/S D-1422 RKB
EDWARDS, CA 93523-0273

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration slated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications or incorporated by reference in or attached to this contract.

☐ 28. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED
TO SIGN (Type or print)

31A. NAME OF CONTRACTING OFFICER (Type or print)

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA

31C. AWARD DATE

BY

PART I – THE SCHEDULE**SECTION B - SUPPLIES OR SERVICES AND PRICE/COSTS****B.1 LINE ITEM DESCRIPTION**

In accordance with this contract, the Contractor shall furnish all materials, labor, equipment and facilities, except as specified herein to be furnished by the Government, and shall do all that which is necessary or incidental to the satisfactory and timely performance of the project entitled “Facility Support Center at Edwards AFB, CA, dated 03/14/2011. This effort consists of a base bid with seven (7) additive items and one pre-priced line item for partnering.

CLIN 0001 Facility Support Center

Project will be performed in accordance with the specifications and drawings set forth in Section C, Description/Specifications/Work Statement, of the contract **excluding** CLINS 0002-0008.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|----------------|------------|-------------|--------------------|
| BASE BID PRICE | 1EA | LOT | \$_____ |

CLIN 0002 Additive Item #1

All work indicated as OPTION Item No. 2 in the specifications and drawings.
Photovoltaic system.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #1 PRICE | 1EA | LOT | \$_____ |

CLIN 0003 Additive Item #2

All work indicated as OPTION Item No. 3 in the specifications and drawings.
Roof Mounted Tubular daylighting devices
.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #2 PRICE | 1EA | LOT | \$_____ |

CLIN 0004 Additive Item #3

All work indicated as OPTION Item No. 4 in the specifications and drawings.
Landscaping

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #3 PRICE | 1EA | LOT | \$ _____ |

CLIN 0005 Additive Item #4

All work indicated as OPTION Item No. 1 in the specification and drawings.
Demolition of buildings 4804, 4810, and 4827 to structural slab.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #4 PRICE | 1EA | LOT | \$ _____ |

CLIN 0006 Additive Item #5

All work indicated as OPTION Item No. 5 in the specification and drawings.
Demolition of concrete slab foundations for buildings 4804, 4810, and 4827.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #5 PRICE | 1EA | LOT | \$ _____ |

CLIN 0007 Additive Item #6

All work indicated as OPTION Item No. 6 in the specification and drawings.
Demolition of asphalt paving at demolition area of buildings 4804, 4810, and 4827.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #6 PRICE | 1EA | LOT | \$ _____ |

CLIN 0008 Additive Item #7

All work indicated as OPTION Item No. 7 in the specification and drawings.
 Parking lot adjacent to Swan avenue entrance to the site.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|------------------------|------------|-------------|--------------------|
| Additive Item #7 PRICE | 1EA | LOT | \$ _____ |

CLIN 0009 PARTNERING

This CLIN provides funding for the Government portion of the cost of the conference facility, and a professional partnering facilitator for the required partnering specified in NASA FAR Sup 1852.236-75, “ Partnering for Construction Contracts” and specification Section 01 30 00, paragraph 1.16 “Partnering”. The cost for the facility and the facilitator will be split 50/50. This funding will not be use for per diem, lodging or food for either contractor or Government personnel.

| | <u>QTY</u> | <u>UNIT</u> | <u>TOTAL PRICE</u> |
|--------------------|------------|-------------|--------------------|
| Level C Partnering | 1EA | LOT | \$2,000.00 |

B.2 1852.216-78 FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is \$_____*

*TO BE COMPLETED AT TIME OF AWARD

[End of Clause]

[END OF SECTION]

PART I – THE SCHEDULE**SECTION C - DESCRIPTION/SPECIFICATIONS**

- C.1** The contractor shall perform all effort and provide all materials, labor, and equipment needed to accomplish the work described in attached specifications and drawings (unless otherwise stated in the contract).

Specifications for Facility Support Center at Edwards AFB, CA
dated 03/14/2011

1402 pages

Drawings for Facility Support Center Building

193 Pages

(End of Clause)

[END OF SECTION]

PART I – THE SCHEDULE

SECTION D - PACKAGING AND MARKING

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[END OF SECTION]

PART I – THE SCHEDULE**SECTION E - INSPECTION AND ACCEPTANCE****E.1 LISTING OF CLAUSES INCORPORATED BY REFERENCE**

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

| CLAUSE NUMBER | DATE | TITLE |
|------------------|----------|----------------------------|
| 52.246-12 | AUG 1996 | INSPECTION OF CONSTRUCTION |

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) CLAUSES

| CLAUSE NUMBER | DATE | TITLE |
|----------------------------|------|-------|
| NONE INCLUDED BY REFERENCE | | |

[END OF SECTION]

PART I – THE SCHEDULE

SECTION F - DELIVERIES OR PERFORMANCE

F.1 LISTING OF CLAUSES INCORPORATED BY REFERENCE

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

| CLAUSE NUMBER | DATE | TITLE |
|------------------|----------|--------------------|
| 52.242-14 | APR 1984 | SUSPENSION OF WORK |

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) CLAUSES

| CLAUSE NUMBER | DATE | TITLE |
|----------------------------|------|-------|
| NONE INCLUDED BY REFERENCE | | |

F.2 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

APPLIES to CLIN 0001 and CLINS 0002-0004 and CLIN 0008 if awarded.

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 540 calendar days, following receipt of a Notice To Proceed (NTP). The time stated for completion shall include final cleanup of the premises.

(End of Clause)

F.3 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

APPLIES to CLINS 0005-0007 if awarded.

If CLINS 0005 – 0007 are awarded the Notice to Proceed for CLINS 0005-0007 will be issued eight (8) months after the completion of CLIN 0001 and CLINS 00002 – 0004 and CLIN 0007.

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 180 calendar days, following receipt of a Notice To Proceed (NTP). The time stated for completion shall include final cleanup of the premises.

(End of Clause)

F.4 52.211-12 LIQUIDATED DAMAGES—CONSTRUCTION (SEP 2000)

APPLIES to CLIN 0001 and CLINS 0002-0004 and CLIN 0008 if awarded.

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$448.00 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of Clause)

F.5 52.211-12 LIQUIDATED DAMAGES—CONSTRUCTION (SEP 2000)

APPLIES to CLINS 0005-0007 if awarded.

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$1280.00 for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of Clause)

[END OF SECTION]

PART I – THE SCHEDULE**SECTION G - CONTRACT ADMINISTRATION DATA****G.1 LISTING OF CLAUSES INCORPORATED BY REFERENCE**

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

| CLAUSE NUMBER | DATE | TITLE |
|------------------|------|-------|
|------------------|------|-------|

None included by reference.

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) CLAUSES

| CLAUSE NUMBER | DATE | TITLE |
|------------------|------|-------|
|------------------|------|-------|

None included by reference.

G.2 ACCOUNTING DATA

PR 4200385257

G.3 1852.242-70 TECHNICAL DIRECTION (SEP 1993)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. "Technical direction" means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that--

- (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;
 - (3) Constitutes a basis for any increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions, or specifications of the contract; or
 - (5) Interferes with the Contractor's rights to perform the terms and conditions of the contract.
- (c) All technical direction shall be issued in writing by the COTR.
- (d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is--
- (1) Rescinded in its entirety; or
 - (2) Within the requirements of the contract and does not constitute a change under the changes clause of the contract, and that the Contractor should proceed promptly with its performance.
- (e) A failure of the Contractor and Contracting Officer to agree that the instruction or direction is both within the requirements of the contract and does not constitute a change under the changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.
- (f) Any action(s) taken by the Contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of Clause)

[END OF SECTION]

PART I – THE SCHEDULE

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 LISTING OF CLAUSES INCORPORATED BY REFERENCE

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

| CLAUSE NUMBER | DATE | TITLE |
|------------------|------|-------|
|------------------|------|-------|

NONE INCLUDED BY REFERENCE

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) CLAUSES

| CLAUSE NUMBER | DATE | TITLE |
|------------------|----------|--|
| 1852.223-70 | APR 2002 | SAFETY AND HEALTH |
| 1852.223-75 | FEB 2002 | MAJOR BREACH OF SAFETY OR SECURITY |
| 1852.236-75 | AUG 1998 | PARTNERING FOR CONSTRUCTION CONTRACTS |

(End of Clause)

H.2 52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

- (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by survey.
- (b) Weather Conditions The weather conditions at the NASA/DFRC site are approximately as listed below but each bidder should satisfy himself before submitting his bid, as to the hazards likely to arise from weather conditions. Complete weather records and reports may be obtained from the National Weather Service.

The climate of the base is characterized by hot, dry summers, and cool, slightly moist winters. Mean annual precipitation is less than 125mm. Most precipitation comes as light

rainfall during the winter months. Light snowfalls of a 50mm are not uncommon, and heavy snowfalls rarely occur. Thunderstorms occasionally bring brief but heavy rains in late summer. Temperatures between 35 and 45 degrees C are common in summer. Winter temperatures may drop well below freezing. Both winter and summer are characterized by wide fluctuations between daytime and nighttime temperatures brought on by the generally low humidity of the desert. Strong southwesterly winds are common particularly in spring and early summer. Moderate to strong easterly Santa Ana winds are common in the fall and winter. The frost-free season is quite variable, but on the average it ranges from 200 to 250 days.

(c) Transportation facilities: N/A.

(d) The natural soils consist predominantly of older alluvial sediments deposited by river and stream action. About 300 mm of loose native fill covers the NASA/DFRC site, consisting of silty sand and sand, tan. Light brown to brown, slightly moist medium dense, medium grained, and containing some gravel and rootlets. The natural soils underlying the site consist of silty sands and sand to a depth of 2 meters. Decomposed granite and the top 300 mm of loose fill, all earth materials are dense and strong. Groundwater may be encountered near the Roger's Dry Lake bed.

(End of Clause)

H.3 52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(c) Utilities furnished by the Government are identified in the contract specifications.

(End of Clause)

H.4 1852.228-75 MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable

Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least \$500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

H.5 1852.237-70 EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

H.6 1852.237-73 RELEASE OF SENSITIVE INFORMATION (JUNE 2005)

(a) As used in this clause, "sensitive information" refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its

service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, Access to Sensitive Information.

(c)(1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237-72, Access to Sensitive Information. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [insert page numbers or other identification of pages].

Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, Access to Sensitive Information. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under a contract that contains the clause at 1852.237-72, Access to Sensitive Information. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the

Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will

comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204-76, Security Requirements for Unclassified Information Technology Resources. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of clause)

H.7 1852.243-72 EQUITABLE ADJUSTMENTS (APR 1998)

(a) The provisions of all other clauses contained in this contract which provide for an equitable adjustment, including those clauses incorporated by reference with the exception of the "Suspension of Work" clause ([FAR 52.242-14](#)), are supplemented as follows:

Upon written request, the Contractor shall submit a proposal for review by the Government. The proposal shall be submitted to the contracting officer within the time limit indicated in the request or any extension thereto subsequently granted. The proposal shall provide an itemized breakdown of all increases and decreases in the contract for the Contractor and each subcontractor in at least the following detail: material quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Workmen's Compensation Insurance; and equipment hours and rates.

(b) The overhead percentage cited below shall be considered to include all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The percentages for overhead, profit, and commission are negotiable according to the nature, extent, and complexity of the work involved, but in no case shall they exceed the following ceilings:

| | Overhead (Percent) | Profit (Percent) | Commission |
|--|-------------------------------|-----------------------------|-------------------|
| To Contractor on work performed by other than its own forces | ----- | ----- | 10 percent |

| | | | |
|---|------------|------------|------------|
| To first tier subcontractor on work performed by its subcontractors | ----- | ----- | 10 percent |
| To Contractor and/or subcontractors on work performed with their own forces | 10 percent | 10 percent | ----- |

(c) Not more than four percentages for overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

(d) The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same percentages for overhead, profit, and commission in paragraph (b) of this clause.

(f) On proposals covering both increases and decreases in the amount of the contract, the application of the overhead, profit, and commission shall be on the net change in direct costs for the Contractor or the subcontractor performing the work.

(g) After receipt of the Contractor's proposal, the contracting officer shall act within a reasonable period, provided that when the necessity to proceed with a change does not permit time to properly check the proposal, or in the event of a failure to reach an agreement on a proposal, the contracting officer may order the Contractor to proceed on the basis of the price being determined at the earliest practicable date. In such a case, the price shall not be more than the increase or less than the decrease proposed.

(End of clause)

H.8 1852.242-72 OBSERVANCE OF LEGAL HOLIDAYS. (AUG 1992)

(a) The on-site Government personnel observe the following holidays:

New Year's Day

Labor Day

Martin Luther King, Jr.'s Birthday

Columbus Day

President's Day

Veterans Day

Memorial Day

Thanksgiving Day

Independence Day

Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

**H.9 DFRC 52.204-91 SECURITY REGISTRATION AND IDENTIFICATION
BADGES--CONSTRUCTION CONTRACTS (FEB 2001)**

(a) All persons engaged in work at Dryden Flight Research Center are required to be registered and badged by the Security Office, and to follow all security regulations and requirements.

(b) The Contractor is responsible for assuring that each employee or company representative wears his/her issued identification badge at all times while they are within the boundaries Dryden Flight Research Center. Badges shall be worn above the waist in such a manner as to be clearly visible.

(c) The Contractor shall ensure that all employees who are terminated or who are no longer connected with the work being performed under this contract are processed out through the Security Office. Badges, keys, vehicle passes/decals, and other Government property must be accounted for and returned. If a computer account has been established, the account must be deactivated.

(d) Only U.S. Citizens and Permanent Resident Aliens will be badged by the security office. Foreign Nationals (non-immigrant aliens) WILL NOT be badged or permitted to perform on-site work on the project (other than to be escorted) until a National Agency Check has been completed.

(e) After badging, contractor and subcontractor employees will be permitted to enter the Center and to drive by direct route from that gate to the parking area assigned to the Contractor by the Contracting Officer.

(f) Employees of construction contractors shall turn in their badges to the Visitor Badging Office, Building 4825, when they complete working on-site.

(End of Clause)

H.10 DFRC 52.223-90 ASBESTOS MATERIAL (FEB 2001)

During performance of this contract, Contractor personnel performing work in DFRC buildings may come in contact with materials containing asbestos. Communication cable manholes are of special concern since they are known to contain a sprayed on fire insulation on or above the ceiling, usually located on the metal or concrete structure of the buildings. This building and all other DFRC buildings may contain asbestos in floor tile, pipe, and lagging insulation, exterior siding, roofing felt, and many other building materials. Prior to disturbing suspected asbestos material in any manner, the Contractor shall notify representatives of the Safety and Health Office for guidance. The Contractor shall be responsible for ensuring that all Contractor personnel working onsite are made aware of and comply with this clause.

(End of Clause)

**H.11 DFRC 52.223-91 SAFETY AND HEALTH PLAN INCORPORATED BY
REFERENCE (FEB 2001)**

After NASA approval, the Contractor's Health and Safety Plan, and any updates thereto, will be incorporated in their entirety by reference, with the same force and effect as if they were given in full text. Therefore, the Contractor's Health and Safety Plan dated * is hereby incorporated by reference.

*TO BE COMPLETED AFTER SUBMISSION AND APPROVAL OF PLAN

(End of Clause)

[END OF SECTION]

PART II – CONTRACT CLAUSES**SECTION I - CONTRACT CLAUSES****I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)**

NOTICE: This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause 52.252-2, Clauses Incorporated by Reference, of this contract. Also, the full text of a clause may be accessed electronically at this/these address(es): Federal Acquisition Regulation (FAR) clauses:

<http://www.acqnet.gov/far/>

NASA FAR Supplement (NFS) clauses:

<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>

I.2 52.202-1 DEFINITIONS. (JUL 2004)**I.3 52.203-3 GRATUITIES. (APR 1984)****I.4 52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)****I.5 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006)****I.6 52.203-7 ANTI-KICKBACK PROCEDURES. (OCT 2010)****I.7 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)****I.8 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)****I.9 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (OCT 2010)****I.10 52.203-13, CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. (APR 2010)**

I.11 52.203-14 DISPLAY OF HOTLINE POSTER(S). (DEC2007)

(a) Definition.

“United States,” as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

<http://oig.nasa.gov/hotline.html>

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

I.12 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY2011)**I.13 52.204-7 CENTRAL CONTRACTOR REGISTRATION. (APR 2008)****I.14 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

- I.15 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS. (JUL 2010)**
- I.16 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (DEC2010)**
- I.17 52.209-09 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (JAN 2011)**
- I.18 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (MAY 2011)**
- I.19 52.210-01 MARKET RESEARCH (APR 2011)**
- I.20 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS. (APR 2008)**
- I.21 52.214-26 AUDIT AND RECORDS - SEALED BIDDING. (OCT 2010)**
- I.22 52.214-27 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 2010)**
- I.23 52.214-28 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING. (OCT 2010)**
- I.24 52.214-29 ORDER OF PRECEDENCE - SEALED BIDDING. (JAN 1986)**
- I.25 52.219-3 NOTICE OF TOTAL HUBZONE SET-ASIDE OR SOLE SOURCE AWARD. (JAN 2011) ALTERNATE I (JAN 2011).**
- I.26 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (JAN 2011)**
- I.27 52.219-14 LIMITATIONS ON SUBCONTRACTING. (DEC 1996)**
- I.28 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (APR 2009)**
- I.29 52.222-3 CONVICT LABOR. (JUN 2003)**
- I.30 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION. (JUL 2005)**
- I.31 52.222-5 DAVIS-BACON ACT—SECONDARY SITE OF THE WORK. (JUL 2005)**
- I.32 52.222-6 DAVIS-BACON ACT. (JUL 2005)**

- I.33 52.222-7 WITHHOLDING OF FUNDS. (FEB 1988)**
- I.34 52.222-8 PAYROLLS AND BASIC RECORDS. (JUN 2010)**
- I.35 52.222-9 APPRENTICES AND TRAINEES. (JUL 2005)**
- I.36 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS. (FEB 1988)**
- I.37 52.222-11 SUBCONTRACTS (LABOR STANDARDS). (JUL 2005)**
- I.38 52.222-12 CONTRACT TERMINATION - DEBARMENT. (FEB 1988)**
- I.39 52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS. (FEB 1988)**
- I.40 52.222-14 DISPUTES CONCERNING LABOR STANDARDS. (FEB 1988)**
- I.41 52.222-15 CERTIFICATION OF ELIGIBILITY. (FEB 1988)**
- I.42 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT. (OCT 2010)**
- I.43 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999)**
- I.44 52.222-26 EQUAL OPPORTUNITY. (MAR 2007)**
- I.45 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION. (FEB 1999)**
- I.46 52.222-35 EQUAL OPPORTUNITY FOR VETERANS. (SEP 2010)**
- I.47 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (OCT 2010)**
- I.48 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010)**
- I.49 52.222-40 – NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)**
- I.50 52.222-50 COMBATING TRAFFICKING IN PERSONS. (FEB 2009)**
- I.51 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)**
- I.52 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS. (DEC 2007)**
- I.53 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. (JAN 1997)**

- I.54 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. (JAN 1997) - ALTERNATE I (JUL 1995)**
- I.55 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (MAY 2011)**
- I.56 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)**
- I.57 52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS. (MAY 2008)**
- I.58 52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS. (MAY 1995)**
- I.59 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS. (DEC 2007)**
- I.60 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS. (MAY 2008)**
- I.61 52.223-18 CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING. (SEP2010)**
- I.62 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JUN 2008)**
- I.63 52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES. (JUN 2000)**
- I.64 52.227-1 AUTHORIZATION AND CONSENT. (DEC 2007)**
- I.65 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (DEC 2007)**
- I.66 52.227-4 PATENT INDEMNITY--CONSTRUCTION CONTRACTS. (DEC 2007)**
- I.67 52.228-2 ADDITIONAL BOND SECURITY. (OCT 1997)**
- I.68 52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997)**
- I.69 52.228-11 PLEDGES OF ASSETS. (SEP 2009)**
- I.70 52.228-12 PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS. (OCT 1995)**
- I.71 52.228-14 IRREVOCABLE LETTER OF CREDIT. (DEC 1999)**

- I.72 52.228-15 PERFORMANCE AND PAYMENT BONDS - CONSTRUCTION (OCT 2010)**
- I.73 52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (APR 2003)**
- I.74 52.232-17 INTEREST. (OCT 2010)**
- I.75 52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)**
- I.76 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (OCT. 2003)**
- I.77 52.233-1 DISPUTES. (JUL 2002)**
- I.78 52.233-3 PROTEST AFTER AWARD. (AUG 1996)**
- I.79 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM. (OCT 2004)**
- I.80 52.236-2 DIFFERING SITE CONDITIONS. (APR 1984)**
- I.81 52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK. (APR 1984)**
- I.82 52.236-5 MATERIAL AND WORKMANSHIP. (APR 1984)**
- I.83 52.236-6 SUPERINTENDENCE BY THE CONTRACTOR. (APR 1984)**
- I.84 52.236-7 PERMITS AND RESPONSIBILITIES. (NOV 1991)**
- I.85 52.236-8 OTHER CONTRACTS. (APR 1984)**
- I.86 52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS. (APR 1984)**
- I.87 52.236-10 OPERATIONS AND STORAGE AREAS. (APR 1984)**
- I.88 52.236-11 USE AND POSSESSION PRIOR TO COMPLETION. (APR 1984)**
- I.89 52.236-12 CLEANING UP. (APR 1984)**
- I.99 52.236-13 ACCIDENT PREVENTION. (NOV 1991)**
- I.91 52.236-13 ACCIDENT PREVENTION. (NOV 1991) ALTERNATE I (NOV 1991)**
- I.92 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS. (APR 1984)**

- I.93 52.236-17 LAYOUT OF WORK. (APR 1984)**
- I.94 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION. (FEB 1997)**
- I.95 52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION. (FEB 1997) - ALTERNATE I (APR 1984)**
- I.96 52.236-26 PRECONSTRUCTION CONFERENCE. (FEB 1995)**
- I.97 52.242-13 BANKRUPTCY. (JUL 1995)**
- I.98 52.242-14 SUSPENSION OF WORK (APR 1984)**
- I.99 52.243-4 CHANGES. (JUN 2007)**
- I.100 52.243-5 CHANGES AND CHANGED CONDITIONS (APR 1984)**
- I.101 52.248-3 VALUE ENGINEERING - CONSTRUCTION. (OCT 2010)**
- I.102 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (MAY 2004) - ALTERNATE I (SEP 1996)**
- I.103 52.249-3 -- TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (MAY 2004) (APPLIES TO CLINS 0005, 0006 & 0007)**
- I.104 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION). (APR 1984)**
- I.105 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)**
- I.106 1852.203-70 DISPLAY OF IG HOTLINE POSTERS. (JUNE 2001)**
- I.107 1852.209-72 COMPOSITION OF THE CONTRACTOR. (DEC 1988)**
- I.108 1852.219-74 USE OF RURAL AREA SMALL BUSINESSES. (SEP 1990)**
- I.109 1852.219-76 NASA 8 PERCENT GOAL. (JUL 1997)**
- I.110 52.225-11 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS. (SEP 2010)**

(a) *Definitions.* As used in this clause--

“Caribbean Basin country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of

components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

“Free Trade Agreement country construction material means” a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Foreign construction material” means a construction material other than a domestic construction material.

“Least developed country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:_____ [*Contracting Officer to list applicable excepted materials or indicate "none"*]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

| Construction material description | Unit of measure | Quantity | Price (dollars) * |
|-----------------------------------|-----------------|----------|-------------------|
| <i>Item 1</i> | | | |
| Foreign construction material | | | |
| Domestic construction material | | | |
| <i>Item 2</i> | | | |
| Foreign construction material | | | |
| Domestic construction material | | | |

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).*]

(End of clause)

**I.112 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS.
(SEP 2002)**

(a) *Payment of price.* The Government shall pay the Contractor the contract price as provided in this contract.

(b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if -

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that -

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the unearned amount), the Contractor shall -

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until -

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory

progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as -

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government shall pay the amount due the Contractor under this contract after -

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A contract action is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the

amount payable under subparagraph (d)(2) of this clause shall be -

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

I.113 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS. (OCT 2008)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to

fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(6) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) Contract financing payments. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the

subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

- (i) Reduction of the amount of any subsequent certified application for payment; or
- (ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--
 - (A) The amounts withheld under paragraph (e)(1) of this clause; and
 - (B) The dates that such withholding began and ended; and
- (6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--
 - (i) The day the identified subcontractor performance deficiency is corrected; or
 - (ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.
- (f) Third-party deficiency reports--(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with the Miller Act (40 U.S.C. 3133), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause--
 - (i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and
 - (ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.
- (2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--
 - (i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or
 - (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying--

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

- (iii) Affected contract line item or subline item, if applicable; and
 - (iv) Contractor point of contact.
- (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

I.114 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (DEC 2010)

(a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.219-8, Utilization of Small Business Concerns (Dec 2010) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Veterans (Sep 2010) (38 U.S.C. 4212(a));

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (29 U.S.C. 793).

(vii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of Clause)

I.115 52.246-21-WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of --

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall --

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished neither by the Government nor for the repair of any damage that result from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of Clause)

I.116 1852.236- PARTNERING FOR CONSTRUCTION CONTRACTS (AUGUST 1998)

(a) The terms "**partnering**" and "**partnership**" used herein shall mean a relationship of open communication and close cooperation that involves both Government and contractor personnel working together for the purpose of establishing a mutually beneficial, proactive, cooperative environment within which to achieve contract objectives and resolve issues and implementing actions as required.

(b) Partnering will be a voluntary commitment mutually agreed upon by at least NASA and the prime contractor, and preferably the subcontractors and the A&E design contractor, if applicable. Sustained commitment to the process is essential to assure success of the relationship.

(c) NASA intends to facilitate contract management by encouraging the foundation of a cohesive partnership with the Contractor, its subcontractors, the A&E design contractor, and NASA's contract management staff. This partnership will be structured to draw on the strengths

of each organization to identify and achieve mutual objectives. The objectives are intended to complete the contract requirements within budget, on schedule, and in accordance with the plans and specifications.

(d) To implement the partnership, it is anticipated that within 30 days of the Notice to Proceed the prime Contractor's key personnel, its subcontractors, the A&E design contractor, and NASA personnel will attend a partnership development and team building workshop. Follow-up team building workshops will be held periodically throughout the duration of the contract as agreed to by the Government and the Contractor.

(e) Any cost with effectuating the partnership will be agreed to in advance by both parties and will be shared with no change in the contract price. The contractor's share of the costs are not recoverable under any other Government award.

(End of clause)

I.117 1852.215-84 OMBUDSMAN. (OCTOBER 2003)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman,

Mr. Patrick C. Stoliker
NASA Dryden Flight Research Center
POB 273, M/S: 2004
Edwards, CA 93523-0273
Phone Number: (661) 276-2706
FAX Number: (661) 276-2298
E-mail: patrick.c.stoliker@nasa.gov

Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail james.a.balinskas@nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

[END OF SECTION]

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS**SECTION J - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS****J.1 LIST OF ATTACHMENTS**

The following documents are attached hereto and made a part of this contract:

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**SECTION J - LIST OF ATTACHMENTS**

| ATTACHMENT NO. | NO. OF PAGES | TITLE |
|---------------------------|-------------------------|--|
| 1 | 24 | General Wage Decision # CA100031, Modification #24 dated 07/22/2011 |
| 2 | 4 | Personal Identity Verification of Contractor Personnel Card Issuance Procedures (NOV 2006) |
| 3 | 1402 | Specifications for Facility Support Center at Edwards AFB, CA dated 03/14/2011 |
| 4 | 193 | Facility Support Center Drawings |
| | T1.0 | TITLE AND INDEX SHEET |
| | T2.0 | GENERAL NOTES |
| | C-1.1 | CIVIL LEGEND & ABBREVIATIONS |
| | C-1.2 | SOIL BORINGS |
| | C-1.3 | SOIL BORINGS |
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[END OF SECTION]

ART IV - REPRESENTATIONS AND INSTRUCTIONS

**SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER
STATEMENTS OF BIDDERS**

K.1 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. (MAY 2011)

(a)

(1) The North American Industry classification System (NAICS) code for this acquisition is 236220.

(2) The small business size standard is \$33.5M.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)

(1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certification in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (d) applies.

☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)

(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the clause at 52.204-7, Central Contractor Registration.

(iv) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, or 2010.

(vi) 52.209-5; Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vii) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(viii) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(ix) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(x) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xi) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xii) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xiii) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiv) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xv) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.

(xvi) 52.225-2, Buy American Act Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xvii) 52.225-4, Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at 52.225- 3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.

(xviii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xix) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.

(xx) 52.225-25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This provision applies to all solicitations.

(xxi) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

___ (i) 52.219-22, Small Disadvantaged Business Status.

___ (A) Basic.

___ (B) Alternate I.

___ (ii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

___ (iii) 52.222-48, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

___ (iv) 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services--Certification.

___ (v) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

___ (vi) 52.227-6, Royalty Information.

___ (A) Basic.

___ (B) Alternate I.

____ (vii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov> . After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

| FAR Clause | Title | Date | Change |
|------------|-------|------|--------|
| | | | |
| | | | |

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of Provision)

K.2 52.209-7 – INFORMATION REGARDING RESPONSIBILITY MATTERS. (JAN 2011)

(a) *Definitions.* As used in this provision—

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the Central Contractor Registration database at <http://www.ccr.gov> (see 52.204-7).

(End of provision)

[END OF SECTION]

PART IV - REPRESENTATIONS AND INSTRUCTIONS

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS

L.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>

http://www.ksc.nasa.gov/procurement/uniq_cls.htm

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) PROVISIONS

| <u>NUMBER</u> | <u>DATE</u> | <u>TITLE</u> |
|---------------|-------------|--|
| 52.211-6 | AUG 1999 | BRAND NAME OR EQUAL |
| 52.211-14 | SEP 1990 | NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (Insert “ [DO-C2]” in blank). (This is a DO rated order). |
| 52.214-3 | DEC 1989 | AMENDMENTS TO INVITATIONS FOR BIDS |
| 52.214-4 | APR 1984 | FALSE STATEMENTS IN BIDS |
| 52.214-5 | MAR 1997 | SUBMISSION OF BIDS |
| 52.214-6 | APR 1984 | EXPLANATION TO PROSPECTIVE BIDDERS |
| 52.214-12 | APR 1984 | PREPARATION OF BIDS. |
| 52.214-7 | NOV 1999 | LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS |
| 52.214-18 | APR 1984 | PREPARATION OF BIDS—CONSTRUCTION |
| 52.214-34 | APR 1991 | SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE |
| 52.214-35 | APR 1991 | SUBMISSION OF OFFERS IN U.S. CURRENCY |

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) PROVISIONS

| <u>NUMBER</u> | <u>DATE</u> | <u>TITLE</u> |
|---------------|-------------|--------------|
| 1852.228-73 | OCT 1988 | BID BOND |

L.2 52.216-1 TYPE OF CONTRACT. (APR 1984)

The Government contemplates award of a Firm Fixed Price (FFP) construction contract resulting from this solicitation.

(End of provision)

L.3 52.222-23 -- NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION. (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

| Goals for Minority Participation for Each Trade | Goals for Female Participation for Each Trade |
|--|--|
| 19.1% | 6.9% |

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on

- (1) its implementation of the Equal Opportunity clause,
- (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and
- (3) its efforts to meet the goals.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is Edwards AFB, California, Kern County.

(End of Provision)

L.4 52.225-12 -- Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements. (Feb 2009)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.*

(1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not

request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

L.5 52.228-1 BID GUARANTEE. (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds --

(1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be 20% of the bid price or \$3,000,000.00, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference

L.6 52.233-2 SERVICE OF PROTEST. (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from NASA/DFRC

Attn: Robyn Barton
P.O. Box 273, M/S: 1505
Edwards, CA 93523-0273

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

L.7 52.236-27 SITE VISIT (CONSTRUCTION). (FEB 1995) - ALTERNATE I (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) An organized site visit has been scheduled for – **10AUG10 at 0900 HRS.**

(c) Participants will meet at – NASA Dryden Flight Research Center, Building 4825, Integrated Support Facility (ISF).

At least three (3) days prior to the site visit, please submit to the Contracting Officer, DFRC Form 735-1, Visit Request Please ensure that this form is filled out completely to avoid any delays in being granted access to Edwards AFB, CA.

http://prod.nais.nasa.gov/eps/eps_data/143422-OTHER-001-004.pdf

(End of provision)

L.8 1852.223-73 SAFETY AND HEALTH PLAN. (NOV 2004) W/ALTERNATE I (NOV 2004)

(a) The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan (see NPR 8715.3, NASA Safety Manual, Appendices). The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) When applicable, the plan shall address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), and high-value equipment and property.

(c) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts that contain one or more of the following conditions:

(1) The work will be conducted completely or partly on premises owned or controlled by the government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazards warrants use of the clause.

(d) This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

L.9 1852.233-70 PROTESTS TO NASA. (OCT 2002)

Potential bidders or offerors may submit a protest under 48 CFR Part 33 (FAR Part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a

protest, a potential bidder or offeror may submit the protest to the Assistant Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Assistant Administrator for Procurement, NASA Code H, Washington, DC 20546-0001.

(End of provision)

L.10 1852.236-74 MAGNITUDE OF REQUIREMENT. (DEC 1988)

The Government estimated price range of this project is more than \$10,000,000.00.

(End of provision)

[END OF SECTION]

PART IV - REPRESENTATIONS AND INSTRUCTIONS**SECTION M - EVALUATION FACTORS FOR AWARD****M.1 LISTING OF PROVISIONS INCORPORATED BY REFERENCE**

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

| CLAUSE NUMBER | DATE | TITLE |
|------------------|------|-------|
|------------------|------|-------|

NONE INCLUDED BY REFERENCE

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) PROVISIONS

| CLAUSE NUMBER | DATE | TITLE |
|------------------|------|-------|
|------------------|------|-------|

NONE INCLUDED BY REFERENCE

M.2 52.214-19 CONTRACT AWARD - SEALED BIDDING - CONSTRUCTION. (AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

M.3 1852.236-71 ADDITIVE OR DEDUCTIVE ITEMS. (MARCH 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of \$100,000, a bidder's base bid of \$85,000, and four successive additives of \$10,000, \$8,000, \$6,000, and \$4,000. In this example, the aggregate amount of the bid for purposes of award would be \$99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed \$100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[END OF SECTION]